INDIANA LEGISLATURE.

[Omissions and curtailments of this report for want of space in these columns will appear in an appendix to Volume XXII of the Brevier Legislative Reports.]

IN SENATE.

FRIDAY, Feb 6, 1885—4 p. m.

[Omitted—See bottom of page 158.]

THE STATE'S TREASURE.

The Senate having under consideration the majority and minority reports pending at the adjournment yesterday—

Mr. McCULLOUGH: I do not speak because I desire to speak to the Senate or because I am fond of speaking, but I have realized there was a duty devolving upon the Democratic majority, and all I have done in committee and out of it, and all I am going to do or say, I do to discharge my duty to the State and the people of the State. It has been said that the people are clamoring for an investigation of the State Treasury, and it would have an influence against us unless there was an investigation. I believe if members will deal with questions which rightfully come before them, and enact proper legislation, that the intelligent demand of the people will be met. The Senator from Marion (Mr. Winter) on yesterday insisted, as other members have asserted, that the interest on public funds collected by the State Treasurer is the property of the State, and that we ought to investigate to see how much interest he has received in that way. [Reads Section 5636 of the Statute.] As I said yesterday, to a person unacquainted with the law and the decisions of the courts, that section would seem to make the Treasurer account for the interest. I also cited sections of the statute concerning County Treasurers that were just as strong. And the holding has always been by the Supreme Court that the County Treasurer is not chargeable with interest. The Senator from Marion refers to the note at the bottom of the section, and contends that the note shows the able lawyers who revised the Code of 1881 thought there was a difference between the County and State Treasurer. I acknowledge the ability of these lawyers. But the fact that the note is inserted where it is shows that in the mind of the commissioners there was doubt upon the subject. If not, why did they insert the note at that place? It is 100 pages from the statute governing County Treasurers. The note would never have been inserted in the statute governing the State Treasurer but to call attention to what the Supreme Court had decided about County Treasurers, and to suggest the doubt as to what would be the construction of the section it follows. Considering the fact that for more than twenty years the State has had no place in which the Treasurer could keep the money, and that he has been compelled to keep it in bank notwithstanding that section, and during all of that time no interest has been required of any Treasurer, although it was known by the Governor and the Legislature, as shown by Governor Porter's message, that the Treasurer was receiving interest, no man can say that it is the law that he should account for interest until the courts of the State have decided it. The Legislature can not settle the question. It is not a court. The Attorney General is the law officer of the State, and it is his duty to see if the interest belongs to the State. Such suit has never been brought against any Treasurer. What good then will investigation do? Why take the time of this Legislature investigating what interest has been received. We may spend the whole time of this Legislature disputing over this matter, and no good could come of it. The Legislature has no power to settle the rights of parties or officers in the past. That power belongs to the judicial tribunals. That duty devolves upon other officers of the State and not upon us.

But, says the Senator from Cass (Mr Magee), the State Treasurer has no right to take county orders. That, again, depends upon the construction of the statute above. If, like the County Treasurer, he has a right to invest the money in what security he pleases until called on by law to pay it out, then it is not unlawful for him to take the orders. But whether it is right or wrong, what can the Legislature do about it? It can not take the orders away from him. It has no power on earth to do anything with reference to the orders. Both reports show that he has the orders. Now, what more light can be thrown upon the question by an investigating committee?

Says another, it is hinted that the Treasurer lost some money in a bank that broke. Suppose he did and you investigating committee should find that to be true. I say to you that for one I am unutterably opposed to making an appropriation to the Treasurer to make up the loss. And I know of no power the Legislature would have to compel a broken bank to make it up.

Says another, there is a rumor that the Treasurer has borrowed the money to supply the loss he has met with. Suppose that is ascertained to be a fact, is the Legislature going to say that you shall not borrow money? Why the law would require him to supply the deficiency, if he has met with loss, and it would make no difference, so far as the State is concerned, whether he borrowed the money or not, so he got it. The people of this State are interested in having proper legislation upon the subject. We can pass laws to govern in the future, not the past. We want to do that carefully and deliberately. For the purposes of legislation we want to investigate the old law, see wherein it is wrong and where it is doubtful. Then carefully amend it. Leave no doubt for the future, so far as it is within our capacity to prevent it.

If this Legislature will turn its attention from balderdash and political clap trap to the law, and make secure the people's money for the future, it will accomplish its duty in that regard, and what the people have a right to expect of it. On the other hand if for noise, excitement and clap-trap, the time is spent in investigating and disputing, and the legislation is neglected as it will be if this thing continues, and the minority hope to have it, the people will hold us to an account for our negligence. And they ought.

The Legislature is in session but two months in twenty-four. Before I was a member of it, I used to hear expressions (not sure but I took part in them myself) to the effect that it would be better if the sessions were shorter and less frequent (of course nothing of that kind has been hinted lately.)

Since 1859 the Governor of the State has had power to investigate the State Treasury at any time without warning. Twenty-two months out of the twenty-four it must be left to the Governor to investigate. And twenty-four months out of twenty-four it ought to be left to him to investigate. If you want game you do not go hunting with brass bands; and when you want to make a genuine investigation you don't want a Legislative Committee to do it, a part of such committee going for political buncombe, usually, and especially so with the minority of the committee in this case.

Within a few days the Treasurer will be required to give a bond for $700,000.00. The men who go on his bond will investigate him in a business-like way. They will not rely upon the Legislative Committee's investigation. And it is the duty of the Governor, under the law to investigate the bondsmen and approve the bond. With that the Legislature has naught to do.

Governor Porter tells us in his message that $300 is not enough to pay an expert to investigate. The committee have reported in favor of increasing the salary of such expert, and such amendment should be made. The Governor and Secretary are the representatives of all the people of the State, and they can make the investigation any moment without warning when it may seem necessary.

One prominent member of this General Assembly is almost exhausted endeavoring for thirty days to get his committee together. It looks now as if by continued industry he would succeed in obtaining a meeting in thirty days more. Think of a committee like that investigating the State Treasurer's office, together with all of the other work that is to be done here in sixty days, and surviving.

For the purposes of legislation, I am willing to assume the worst state of facts that any of the gentlemen who want to investigate can imagine. For the purpose of legislation assume that the money is loaned; assume that the Treasurer had met with loss; assume that he has had to borrow to make up the deficiency, or if that is not the case at present, assume that there might be a time when these things would exist, and make your legislation accordingly. The safe legislator is the one who endeavors to think of every possible contingency that might arise, and legislate with reference to it. I am in favor of stopping this noise and clamor, and endeavoring to enact proper legislation to make the money of the State perfectly secure, and attending to the business properly before this General Assembly.

[Continued on bottom of page 168.]

MEDICAL LEGISLATION.

Mr. Shively's bill [S. 18] to regulate the practice of medicine coming up on the second reading—

Mr. McINTOSH moved to amend the bill so that if a physician desires to prove he has practiced medicine for ten years continuously he has to prove that fact by two reputable witnesses, either householders or freeholders of the county in which he proposes to practice, and also that he is a man of reputable character. He said: I hope that will pass, in order that we may guard the people as well as the profession. Some of our fellow-citizens, especially those of the legal profession, may smile when we talk of proving moral character, especially of a physician. But I believe a physician ought to have a good moral character in order to practice medicine. The medical colleges of this State and all well regulated medical colleges in this country require of a student before he is allowed to matriculate to present evidence of a good moral character. But in Indiana any man can practice medicine, whether he has been run off from other States on account of lack of moral qualifications or not. There is another slight amendment to the bill in the one I offered—that the Clerk shall have twenty-five cents for the affidavit and pay for recording, etc.

Mr. WEIR: Under the amendment, as I understand it, which I am opposed to, if the most eminent physician that lives comes into the State and desires to become a citizen and engage in the practice of his profession, he is unable to do so until he finds two freeholders or householders to swear to his moral character. Inasmuch as there are others who have given this bill more attention and are better able to discuss its merits, I will not detain the Senate further than to call attention to that one point, as it occurred to me when the amendment was read.

Mr. WINTER: I introduced a bill [S. 223] on this subject, which has been carefully prepared by a committee appointed by the State Medical Society. It was referred to the Committee on Public Health, and I am informed did not reach that committee till after it had reported the bill under consideration. There seems to be a very general desire that there shall be some legislation on this subject, and we should legislate intelligently and with a full knowledge of the matter before us; and to consider the various bills presented at the same time is the only way in which we can do so. I move to amend the amendment by striking out all after the enacting clause of the bill and inserting in lieu Senate bill 223.

Mr. SELLERS: This committee has letters from about half the physicians in the State. Some one has sent a circular out asking them to write their opinion to their legislators, and about nine in every ten favored this bill. I believe this bill will give better satisfaction than any bill that has been introduced in this Legislature. I understand this same committee of the State Medical Society, after their bill had been introduced, expressed themselves as satisfied with this bill. Perhaps it is not as strong as they would desire, but they believe it as much so as any that ought to be passed at this time. This class of legislation must be proceeded with in a careful manner. We must approach perfection by degrees. The amendment provides that one of the qualifications shall be a good moral character. Who is to judge of the standard of moral character?

Mr. McINTOSH: My amendment proposes that two witnesses shall fix it.

Mr. SELLERS: I object to that manner of fixing the standard, because no two will agree as to what it is. Another objection is, if the persons character should become bad after having obtained a license, he would be liable to continual prosecution by every person in the State. Another objection is that whoever makes a false affidavit shall be guilty of a misdemeanor. I hope no amendment will be made to the bill.

Mr. CAMPBELL, of Hendricks: I shall ask some of the advocates of this bill to give some reason why there should be any legislation upon this subject. So far as this discussion has gone, it is as to which is the better of the two bills. For my own part, as at present advised, I shall vote against either and both, on the ground that no good reason has been shown for legislation on the subject.

Mr. HILLIGASS: Was not the bill 223 prepared by one of the schools of medicine?

Mr. WINTER: I understand it has been submitted to the homeopathic school, and received their approbation. I don't know, but I am inclined to say legislation is necessary because surrounding States have adopted laws, under the effect of which quacks have flocked into Indiana. I will move that the bill be recommitted.

Mr. FOULKE: It seems to me it is the opinion of the citizens of the State should be taken as to the necessity of legislation; it should be for the interests of the people of the State, and not what the doctors desire. I have some doubts as to the advisability of attempting to protect the people against empyricism at all, or whether it can be done under any circumstances. I know an instance in where a man who has practiced for ten years stated that the circulation of the blood was from the heart through the lungs directly into the system; and upon being asked where the heel bone is situated stated that it was at the bottom of the vertebral column. To a man who practiced medicine in my own town for ten years I handed a collection of bones from a human foot, and on asking him to distinguish between them, he told me I was bringing in comparative anatomy; that they were not the bones of a human foot, but the bones of an animal. Such men are not competent to practice medicine. You should establish a higher qualification than is proposed either in the amendment or in the bill. Medicine is a little like that of which a poet spoke in regard to another matter; you must "drink deep or taste not of the hyperian spring."

A State Board of Examiners is objected to, and with good reason, by some of the schools, on the ground that it will give a great preponderance to the allopaths. Doctors who practice the homeopathic, physio-medical or eclectic schools have as much right, they say, to be represented on the board as the old school. I don't know that we had better do anything in this direction.

Mr. WINTER: I desire to change my motion, that the bill and amendment be printed and made the special order for Tuesday at 10 o'clock.

Mr. SHIVELY: I second the motion. The Senator from Wayne states there is no requirement for qualification in this bill. When a man or a woman presents a diploma obtained from a reputable medical college, by attending that college three, four or five years, studying day and night, it ought to be some evidence that the individual has some qualification to practice medicine. The bill provides that any person, male or female, who has practiced ten years, and has attended one full course of medical lectures, may obtain a license. It appears to me, under such requirement, there must be some qualification. Those who have practiced medicine for ten years and labored day and night to qualify themselves, and having the advantage of one course of lectures in some reputable medical college, I calculate they ought to have learned something and know something about the practice of medicine. It may be in the county of Wayne some of the profession are so ignorant that they can't tell a human bone from that of a beast, but I don't think that is the case with the profession generally throughout the State of Indiana. I think we have a very intelligent profession throughout the State.

Mr. THOMPSON: I have been very much astonished since this session of the Senate commenced at the number of letters from physicians, that both the Senators from Marion County have received, protesting against any law on this subject, but if any favoring the Senate bill. We have some eight or ten prominent physicians in this city protesting against any law. We are confused as to what we ought to do in the premises.

The motion to postpone the further consideration of the bill and amendments and make it a special order for Tuesday next, at 10 o'clock, was agreed to.

SCHOOL FUND INTEREST.

Mr. Hudson's bill [S. 29—see page 136] coming up on second reading—

Mr. HUDSON: No man would hesitate longer before advocating a measure to lessen the receipts of the school fund than I. The rate must be reduced eventually to 6 per cent. We are coming to it gradually, but we had better proceed with a sliding scale in the way indicated by this bill. The question is whether or not it is better for the General Assembly to lessen the rate of interest to 6 per cent, in counties where they find it impossible to loan this fund at 8 per cent., or whether interest on the entire fund shall be lessened to 6 per cent. That is the question we have to meet. About $240,000 a year goes into the State Treasury for the use of the school fund of the State. Now, it 90 per cent. of that fund is loaned at 8 per cent., I submit if it would not be bad policy to lessen that rate of interest at 6 per cent. on the whole, simply to loan out the other 10 per cent. that now remains unloaned. Reducing the per cent. from 8 to 6 means just $60,000 lost to the school fund every year. There are counties in which, they say, they could loan three times as much as they have at 8 per cent., and there are other counties that find it impossible to loan what they have. I earnestly hope the relief to which they are entitled will be given by the passage of this bill.

Mr. WEIR: It seems to me, in counties where there is no demand for this money the County Commissioners, with the Auditor, ought to be permitted to loan it at a rate not less than 6 per cent., and thus the counties would be compelled to make up to the State only the difference between what they receive and the 8 per cent. In the county I live you can borrow all the money you want for 7 per cent., and in the larger counties the rate is 6 per cent. This bill affects no other counties but those needing relief, and it seems but just that they should be allowed to loan money at the best rate they can get above 6 per cent., and make up the difference to the State. It seems to me hardly necessary to take up much time in discussing this bill. It seems to me its merits should meet with such a general indorsement upon the part of Senators as to cause its immediate passage.

Mr. BROWN: I move to strike out the word "eight" and insert in lieu the word "seven." I regarded it as bad legislation when the rate was changed from seven to eight. When the rate was 7 per cent. we heard no complaint that the people who needed this money was not taking it out of the Treasury. It is only since the rate was placed at 8 per cent.—an exhorbitant rate when you take into consideration the expense necessary to obtain it—that complaint has been made. Reduce the rate all over the State to 7 per cent. and it will avoid all difficulty and complaint in the future. It will only cut the rate one-eighth. I hope the amendment will be adopted.

Mr. McINTOSH: I hope the amendment will not be adopted. It seems to me that to cut down the interest on the fund belonging to the school children of the State is the wrong place to begin. As regards the bill itself, all I have to say is the Committee on County and Township business considered it at two meetings, and the committee was unanimous against the passage of the bill. The author of the bill insisted he would like to have the bill returned with a minority report so he could have it considered in the Senate, and one of the committee presented a minority report to accommodate him.

Mr. FOWLER: I think it would be bad policy to reduce the rate of interest on school moneys to 7 per cent. because I feel sure the money can be loaned in a majority of the counties at 8 per cent., and where it can it ought to be loaned at that. It is not an exhorbitant rate, and there is no good reason why it should be reduced to seven.

Mr. OVERSTREET: I am decidedly in favor of the amendment. As I understand it the school money of the State is distributed to the several counties so that the citizens of each and every county might have an equal chance to have the use of the money. I think upon principle, even if the money can't be loaned in some counties, the State can't afford to say the citizens in one county may have the money at 6 per cent. and in another county exact 8 per cent. off of those who need the money. The General Assembly in fixing the rate of interest, either upon individual claims or on the school fund, should make it equal all over the State, and have no uncertainty about it. Let it go out that the citizens of Laporte County, or Union County, are getting the benefit of the public fund at 6 per cent., the citizens of Johnson County would say: "We should not pay more than the citizens of Laporte and Union". If they are so prosperous in one county that money won't command more than 6 per cent., you should not go to a county less prosperous and exact 8 per cent. All laws ought to be general. We might as well say the rate of interest in one county in individual transactions should be 6 and not 8. We must deal out fair and exact justice to all citizens. To all who have the privilege of borrowing school moneys, the rate of interest should be uniform.

Mr. DAVIS: The citizens of Elkhart are sufficiently loyal to the interests of the children of the State to borrow all the moneys in the school fund they can get at 8 per cent.

Mr. RAHM: I decidedly favor the amendment offered by the Senator from Allen and Whitley (Mr. Brown), for this reason: I think it is not right and fair for the State of Indiana to compel the people to pay 8 per cent. interest, when we all know that it is notoriously too much. Just because some of our citizens and neighbors happen to be poor, and because we have the power, we say to the County Auditors: "Go ahead and continue to ask 8 per cent, and the balance you can't loan at 8 place at 6." At this time 8 per cent is an outrageous high rate. The Government is getting money at 3, and the State is offered money at 3½, and why should we compel our citizens who may want money out of the school fund to pay 8 per cent? I think the amendment is right and proper. It is half way meeting our citizens, even if it does reduce the present rate 1 per cent. I claim to be as much in favor of school's as any man, but I say it is only right and just and proper to come down with the interest and keep up with the times. If we reduce the rate of interest I venture all the money will be placed. Don't let us make fish of one and flesh of another.

Mr. HILL: I favor the amendment of the Senator from Allen and Whitley (Mr. Brown) because I think it will produce more money for the school fund than the present rate. The present rate is 8 per cent., and that is charged and taken in advance. Then there are certain expenses attending the getting of this money, and after all these costs are paid the person who gets the money pays 9 and in some cases 10 per cent. If the rate of interest is reduced to 7 per cent. we will likely realize more than we do at 8, the present rate, and for that reason I propose to vote for the amendment.

Mr. McCULLOUGH: I am opposed to a bill which would require individuals to pay 6 or 7 per cent. to the county and the county pay 8 per cent. to the State. That would be compelling the county to pay 1 or 2 per cent. for nothing. I don't think that part of legislation was to be valid. It is only because of a clause in the Constitution that the county is required to pay interest to the State. The Constitution provides that the county shall take care of the principal. It is not a trustee for the purpose of loaning. If a law is enacted making the rate 6 per cent. and requiring the county to pay 8 per cent. to the State, then the 2 per cent. difference is not interest at all; it is simply a taxation of 2 per cent. I am in favor of making the rate of interest uniform throughout the State.

Mr. WEIR: I hope the amendment offered by the Senator from Whitley will not be adopted. It proposes to reduce the rate of interest on the school fund to 7 per cent throughout the State, and thus reduce the income just one-eighth. Now, there may be something in the constitutional question raised by the Senator from Gibson (Mr. McCollough), but I am not able to agree with him. The county has to pay 8 per cent. to the State, and this iron-clad rule that they must loan it at 8 per cent., and not be allowed to loan it at something near 8, simply takes out of some County Treasurer $2,000 a year, and yet the money lies idle. If the county only has to make up 1 or 2 per cent., I can see no reason why the county should not be better off. I think this bill ought to pass.

Mr. SELLERS: I am opposed to this bill because I can see how, under its provisions, the Auditor and Commissioners of a county, when they are candidates for re-election, may favor every doubtful voter in the county with a loan of money from the school fund. They will loan to those persons who favor their candidacy at a lesser per cent., and the citizens of the whole county will be obliged to make up the difference, thus allowing candidates for re-election to have their campaign expenses paid by the citizens of the whole county. I rather favor the amendment of the Senator from Whitley, and yet I am not really ready to vote upon it.

Mr. CAMPBELL, of Hendricks: This question involves too much to be considered hastily. The bill relates simply to the loan of school moneys in certain counties remaining unloaned. The amendment concerns the interest on five millions, in round numbers, and involves a question of so much much more importance than the bill, the whole subject should receive careful and deliberate attention. I move that the bill and amendments—

Mr. WEIR: Inasmuch as the question of the constitutionality of the bill has been raised, and inasmuch as that is a most important question, I ask the Senator if he will not move that the Judiciary Committee report as to its constitutionality.

Mr. CAMPBELL: Certainly; send it to the Judiciary Committee with instructions to report on its constitutionality.

It was so ordered.

And the Senate adjourned.

"Maryland, My Maryland."

"Pretty Wives,
Lovely daughters and noble men."

"My farm lies in a rather low and miasmatic situation, and

"My wife!"

"Who?"

"Was a very pretty blonde!"

Twenty years ago, became

"Sallow!"

"Hollow-eyed!"

"Withered and aged!"

Before her time, from

"Malarial vapors, though she made no particular complaint, not being of the grumpy kind, yet causing me great uneasiness.

"A short time ago I purchased your remedy for one of the children, who had a very severe attack of biliousness, and it occurred to me that the remedy might help my wife, as I found that our little girl, upon recovery had

"Lost!"

"Her sallowness, and looked as fresh as a new-blown daisy. Well, the story is soon told. My wife, to-day, has gained her old timed beauty with compound interest, and is now as handsome a matron (if I do say it myself) as can be found in this county, which is noted for pretty women. And I have only Hop Bitters to thank for it.

"The dear creature just looked over my shoulder, and says 'I can flatter equal to the days of our courtship,' and that reminds me there might be more pretty wives if my brother farmers would do as I have done."

Hoping you may long be spared to do good, I thankfully remain,

C. L. JAMES.

Beltsville, Prince George County, Maryland, May 26, 1883.
